

INDUSTRY TRAINING BILL

EXPLANATORY NOTE

Clause 1 relates to the Bill's Short Title and commencement. *Clauses 21 and 22* come into force 2 years after assent. The rest of the Bill comes into force on assent.

PART I

PRELIMINARY

Clause 2 defines certain terms used in the Bill.

Clause 3 provides that a contract between an employer and an employee for the employee to receive industry training is deemed to be part of the employee's employment contract.

Clause 4 provides that the Bill binds the Crown.

PART II

RECOGNITION OF INDUSTRY TRAINING ORGANISATIONS AND APPROVAL OF INDUSTRY TRAINING PROGRAMMES

Clause 5 provides for the recognition by the Board of the Education and Training Support Agency ("the Board") of industry training organisations. Organisations must be bodies corporate or partnerships, must represent and be funded by industry employers, must be aware of and responsive to the training needs of their industry, and must be adequately organised to deliver the training they have in mind.

Clause 6 empowers the Board to enter into agreements with recognised industry organisations for the delivery of training programmes. Programmes must be incorporated or likely to be incorporated into the national qualifications system, and provide adequately for monitoring and maintenance of the quality of the training to be delivered. The Board must, before entering into an agreement, consult the New Zealand Qualifications Authority, and have regard to a number of matters set out in *subclause (1) (b)*.

Clause 7 gives the Education and Training Support Agency additional functions in relation to industry training.

No. 113—1

Price
incl. GST \$2.30

PART III

LEVIES

Clause 8 empowers the Minister of Education to impose levies on employers in a particular industry for the benefit of a recognised industry organisation.

Clause 9 requires the Minister to be satisfied of certain matters before imposing a levy. In particular, the Minister must be satisfied that the recognised organisation is responsive to the industry concerned; that the persons required to pay the levy will benefit (or be able to benefit if they choose) from the organisation's activities; and that the imposition of the levy has the support of considerably more than half of the persons required to pay it, of persons required to pay it who employ considerably more than half of the people employed in the industry, and of persons together required to pay considerably more than half the total amount of levy payable.

Clause 10 sets out the matters required to be specified in a levy notice. A notice must specify (for each levy if it imposes more than 1) the rate of the levy, the basis on which it is to be calculated, the persons required to pay it, how it is to be collected, and how the organisation for whose benefit it is imposed is to be accountable for its use.

Clause 11 deems levy notices to be regulations. The effect is that they must be published as part of the Statutory Regulations series, and may be disallowed under the Regulations (Disallowance) Act 1989.

Clause 12 provides that, as long as a levy notice complies with *clause 10*, it is to have effect according to its tenor.

Clause 13 provides that levy notices expire after 3 years.

PART IV

TECHNICIANS TRAINING ACT 1967 AND APPRENTICESHIP ACT 1983

Clause 14 repeals the Technicians Training Act 1967 and the Apprenticeship Act 1983, and revokes certain orders made under the former.

Clause 15 preserves existing technician's and apprenticeship contracts, and (so long as any contracts to which they relate have not expired) determinations under the Technicians Training Act 1967 and apprenticeship orders. Subject to the relevant determination and orders, and the powers of the Board under *clause 17*, the Employment Contracts Act 1991 will apply to apprenticeship contracts as if they are employment contracts.

Clause 16 deems certain of the provisions of the Apprenticeship Act 1983 repealed by *clause 14* to form part of existing apprenticeship contracts.

Clause 17 gives the Board certain powers in respect of existing contracts. The Board may amend orders, reduce the term of contracts, issue completion certificates, and establish committees and delegate the Board's powers to them.

Clause 18 empowers the Board to recognise new arrangements in the nature of apprenticeship, and issue certificates in respect of their successful completion. It is intended that this power will be exercised only until arrangements in the nature of apprenticeship are incorporated into the national qualifications system. The Board will also be able to issue completion certificates in respect of the successful completion of training programmes not yet integrated into the national qualifications system.

Clause 19 continues the exemption of apprentices from the Minimum Wage Act 1983.

PART V

INDUSTRIAL TRAINING LEVIES ACT 1978 AND VOCATIONAL TRAINING ACT 1982

Clause 20 provides that *clauses 21 and 22* do not come into force until 2 years after the commencement of the rest of the Bill.

Clause 21 repeals the Industrial Training Levies Act 1978 and the Vocational Training Act 1982, and revokes orders made under the former.

Clause 22 dissolves all existing industry training boards, and vests their assets and liabilities in the Minister.

Clause 23 empowers the Minister to levy employers to recover any shortfall in the assets of a dissolved industry training board.

Hon. Dr Lockwood Smith

INDUSTRY TRAINING

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A BILL INTITULED

An Act to—

- (a) Provide for the funding of industry training organisations; and
- 5 (b) Provide for the payment by persons engaged in industries of levies providing funds for recognised organisations administering the delivery of industry-based training in those industries; and

- (c) Encourage and improve industry-based training; and
- (d) Provide for the administration of approved programmes of industry-based training and training arrangements in the nature of apprenticeship; and 5
- (e) Provide for the protection of people receiving industry-based training; and
- (f) Repeal the Technicians Training Act 1967 and the Apprenticeship Act 1983, and provide for the continued administration of contracts under those Acts; and 10
- (g) Provide for other related matters

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Industry Training Act 1991. 15

(2) Except as provided in section 20 of this Act, this Act shall come into force on the day on which it receives the Royal assent.

PART I 20

PRELIMINARY

2. Interpretation—In this Act, unless the context otherwise requires,—

“Agency” means the Education and Training Support Agency established by section 270 (1) of the Education Act 1989: 25

“Apprenticeship contract” means a contract of apprenticeship, registered under section 19 of the Apprenticeship Act 1983, that was in force immediately before the commencement of this Act: 30

“Approved programme” means a training programme in respect of which an agreement entered into under section 6 of this Act is for the time being in force:

“Board” means the Board of the agency, constituted under section 272 of the Education Act 1989: 35

“Employment contract” has the same meaning as in the Employment Contracts Act 1991:

“Industry” includes any occupation, profession, sector of the New Zealand economy, or trade, and any group of industries: 40

- “Industry training” means systematic training in skills or methods characteristic of, or likely to be valuable to, people engaged in a particular industry:
- 5 “Levy notice” means a notice under **section 8 (a)** of this Act:
- “Minister” means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act:
- 10 “National qualifications system” means the system administered by the qualifications authority:
- “Qualifications authority” means the New Zealand Qualifications Authority established by section 248 (1) of the Education Act 1989:
- 15 “Recognised organisation” means a body corporate or partnership for the time being recognised for the purposes of this Act under **section 5 (1)** of this Act:
- “Satisfied” means satisfied on reasonable grounds:
- 20 “Technician’s contract” means a contract (within the meaning of section 2 of the Technicians Training Act 1967) that was in force immediately before the commencement of this Act:
- “Technicians’ determination” means a determination under section 4 of the Technicians Training Act 1967 (whether or not thereafter amended or consolidated under that Act) that was in force immediately before the commencement of this Act:
- 25 “Training board” means an industry training board established under the Vocational Training Act 1982:
- 30 “Training programme” means a programme of industry training.

3. Training contracts to have effect as employment contracts—Any contract between an employer and an employee that relates to the employee’s receiving, or provides for the employee to receive, industry training (whether provided by the employer or provided by some other person) shall for all purposes be deemed to be part of the employee’s employment contract.

4. Act binds the Crown—This Act binds the Crown.

PART II

RECOGNITION OF INDUSTRY TRAINING ORGANISATIONS AND
APPROVAL OF INDUSTRY TRAINING PROGRAMMES

- 5. Board may recognise industry organisations**—(1) On application by any person or body of people, the Board may,— 5
- (a) After consulting the qualifications authority; and
 - (b) If satisfied that the applicant—
 - (i) Is a body corporate or a partnership; and
 - (ii) Can develop a system for administering the delivery of industry training; and 10
 - (iii) Can administer the delivery of industry training efficiently and effectively under such a system,—
- recognise the applicant for the purposes of this Act.
- (2) In determining whether or not it is satisfied of the matters referred to in **subsection (1) (b) (iii)** of this Act, the Board shall have regard to— 15
- (a) The extent to which an applicant—
 - (i) Represents and is funded by employers of people engaged in the industry to which the industry training whose delivery it proposes to administer relates; and 20
 - (ii) Is aware of and responsive to the industry's training needs; and
 - (iii) Has or will have sufficient resources of skill and knowledge, to administer the delivery of the training effectively and efficiently; and 25
 - (b) The desirability of avoiding unnecessary duplication of effort in the administration of programmes of industry training (whether administered by recognised organisations or by bodies receiving public money appropriated by Parliament); and 30
 - (c) Any other matters specified in that behalf in the agency's charter.
- 6. Board may agree to fund administration of training programme**—(1) After consulting the qualifications authority, the Board may,— 35
- (a) If satisfied that the programme—
 - (i) Is, or is in the process of being, incorporated into the national qualifications system (or incorporates elements of the apprenticeship system in place on the commencement of this Act, and is likely to be incorporated into the national qualifications system); and 40

(ii) Provides adequately for monitoring and maintenance of the quality of the training to be delivered by it; and

(b) After having regard to—

5 (i) The amount of training proposed to be delivered by the programme (in terms of likely numbers of trainees trained and numbers of units of learning from the national qualifications system undertaken); and

10 (ii) The extent (if any) to which the programme extends industry training to industries, or areas of industries, where industry training has not traditionally been available; and

15 (iii) The extent (if any) to which the programme will extend industry training to people of a kind or description identified in the Board's charter, or in a written notice given to the Board by the Minister, as people to whom industry training has not traditionally been available,—

20 enter into an agreement with a recognised body for the administration by the body of a training programme (whether or not provided by the body) and the body's funding through the Board for the purpose.

(2) An agreement under this section shall specify—

25 (a) Performance standards (relating both to the administration by the body concerned of the delivery of the programme concerned and to the quality, extent, and effectiveness of the programme); and

30 (b) The variation, suspension, and termination of the funding concerned if the standards are not met.

(3) For the purpose of determining the extent to which the performance standards specified in an agreement under this section are being or have been met, the Board may by written notice to the recognised body concerned require it to give to the Board in writing any financial report, or statistical or other information relating to the body, specified in the notice, within a time specified in the notice; and the body shall take all reasonable steps to comply with the notice.

40 **7. Additional functions of agency**—In addition to the functions given to the agency by or under enactments other than this Act, the agency has the following functions (and Part XXI of the Education Act 1989 shall have effect accordingly):

- (a) To promote the widest possible availability within industry of high quality training programmes, integrated into the national qualifications system:
- (b) To administer and disburse public money appropriated by Parliament for the purpose of industry training: 5
- (c) To promote, in accordance with its charter, the protection of the interests of people receiving training under approved programmes:
- (d) To ensure that there are in place, and monitor and ensure the effectiveness of, systems to maintain at a satisfactory level the quality and effectiveness of the training available through approved programmes. 10

PART III

LEVIES

8. Minister may impose levies—Subject to sections 9 and 10 of this Act, the Minister may from time to time, on the advice of the Board, by written notice— 15

- (a) Give effect to a levying scheme proposed by a recognised organisation:
- (b) Subject to section 10 of this Act, amend any levy notice: 20
- (c) Revoke any levy notice.

9. Minister to be satisfied of certain matters—The Minister shall not publish a levy notice unless satisfied, on reasonable grounds, that—

- (a) The recognised organisation that proposed the scheme given effect by the notice is responsive to the needs of the industry whose members are required by the notice to pay the levy concerned; and 25
- (b) The persons required to pay the levy will benefit, or will be able to benefit if they choose, from the activities of the organisation; and 30
- (c) The scheme has the support of—
 - (i) Considerably more than half of the persons required to pay the levy; and
 - (ii) Persons required to pay the levy who together employ considerably more than half of the total number of people employed by persons required to pay the levy; and 35
 - (iii) Persons required to pay the levy who together will be required to pay considerably more than half the total amount of levy to be paid; and 40

- (d) Persons and organisations opposing the scheme have had a reasonable opportunity to put their views to the Board; and
- 5 (e) The Board has had due regard to all views put to the Board about the scheme; and
- (f) The Board has had relayed to the Minister all views put to the Board about the scheme; and
- (g) The Minister has had due regard to all views relayed to the Minister by the Board; and
- 10 (h) The organisation will spend the proceeds of the levy on the administration and delivery of training programmes; and
- (i) The organisation will account adequately to the persons who pay the levy for its expenditure; and
- 15 (j) That all other relevant matters known to the Minister have been properly considered.

10. Matters to be specified in levy notices—Every levy notice shall specify—

- 20 (a) The rate of each levy imposed under the scheme to which the notice gives effect; and
- (b) The basis on which the amount of each levy is to be calculated or ascertained; and
- (c) In respect of each levy, either—
 - 25 (i) The persons required to pay it; or
 - (ii) A means by which the persons required to pay it may be ascertained; and
- (d) The persons (if any) who are to be exempt from paying the levy; and
- (e) How each levy is to be collected; and
- 30 (f) How the recognised organisation that proposed the scheme is to be accountable to the persons who pay the levy for its use.

11. Levy notices deemed to be regulations—Every levy notice, every other notice under **section 8** of this Act, and every
35 notice under **section 23** of this Act, is deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989.

12. Levy notices to have effect according to tenor—Subject to **sections 8 (b)** and **10** of this Act, every levy notice shall have effect according to its tenor.

40 **13. Levy notices to expire after 3 years**—Every levy notice (and any amendments to it) shall expire, and be deemed

to have been revoked, with the close of the day before the third anniversary of the day it was given.

PART IV

TECHNICIANS TRAINING ACT 1967 AND APPRENTICESHIP ACT 1983

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14. Technicians Training Act 1967 and Apprenticeship Act 1983 repealed—(1) The Technicians Training Act 1967 and the Apprenticeship Act 1983 are hereby repealed.

(2) The enactments specified in the **First Schedule** to this Act are hereby consequentially repealed.

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(3) The Orders in Council specified in the **Third Schedule** to this Act are hereby consequentially revoked.

15. Transitional—Notwithstanding **section 14** of this Act,—

(a) Every apprenticeship contract shall continue in existence until the day on which it is expressed to expire or an earlier day specified for the purpose under **section 17 (b)** of this Act:

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(b) Every apprenticeship order shall continue in existence, and have effect according to its tenor, until every apprenticeship contract to which it applies has expired, and shall then expire:

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(c) Every technician's contract shall continue in existence until determined according to law:

(d) Every technicians' determination shall continue in existence, and have effect according to its tenor, until every technician's contract to which it applies has expired, and shall then expire:

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(e) Subject to **section 16** of this Act and to **paragraph (b)** of this section, sections 26 to 189 of, and the First and Second Schedules to, the Employment Contracts Act 1991 shall apply to every technician's contract and apprenticeship contract as if it is an employment contract within the meaning of that Act.

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16. Certain repealed provisions deemed to form part of existing contracts— Notwithstanding **section 14** of this Act, sections 14 to 19, 23, and 51 of the Apprenticeship Act 1983 shall be deemed to form part of every apprenticeship contract; but as if every reference in sections 14 to 19, and section 23, to a District Commissioner or local committee is a reference to the Board.

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17. Powers of Board in relation to existing contracts—

The Board may—

- 5 (a) On the recommendation of—
 (i) A recognised organisation operating in the industry concerned; or
 (ii) A committee established by the Board for the purpose,—
 by notice in the *Gazette* amend any technician's determination or apprenticeship order:
- 10 (b) By written notice to the parties, specifying the reasons for doing so, set a reduced term for any apprenticeship contract:
- (c) Issue certificates for technician's contracts and apprenticeship contracts successfully completed.

15 **18. Powers of Board in relation to other training programmes—**The Board may—

- (a) Recognise any training programme that—
 (i) Has been entered into pursuant to one or more employment contracts; and
 (ii) In the Board's opinion is a training arrangement in the nature of apprenticeship:
- 20 (b) Issue certificates of successful completion of—
 (i) Any training programme recognised under paragraph (a) of this section:
 (ii) Any other training programme not yet fully integrated into the national qualifications system:
- 25 (c) Establish and disestablish committees for the purposes of this section:
- 30 (d) Delegate to any such committee, unconditionally or subject to any conditions it thinks fit, any of its powers under this section.

35 **19. Consequential amendment—**Section 9 of the Minimum Wage Act 1983 is hereby consequentially amended by repealing paragraph (a), and substituting the following paragraph:

- “(a) Apprentices under apprenticeship contracts (within the meaning of section 2 of the Industry Training Act 1991):”.

PART V

INDUSTRIAL TRAINING LEVIES ACT 1978 AND VOCATIONAL
TRAINING ACT 1982

20. Commencement of provisions deferred for 2 years—Sections 21 and 22 of this Act shall come into force on the second anniversary of the day on which this Act receives the Royal assent. 5

21. Repeals—(1) The enactments specified in the Second Schedule to this Act are hereby repealed.

(2) All notices under the Industrial Training Levies Act 1978 are hereby revoked. 10

22. Industry training boards dissolved—(1) Every training board is hereby dissolved.

(2) All rights, assets, liabilities, and debts that any training board had immediately before the commencement of this section shall be deemed to have become rights, assets, liabilities, and debts of the Minister. 15

(3) Where any rights, assets, liabilities, or debts of any training board vest in the Minister under subsection (2) of this section, the Minister shall, in dealing with them, have regard to— 20

(a) The desirability of promoting industry training in the industry for which the board was established; and

(b) Any views the board expressed to the Minister before it was disestablished. 25

23. Employers may be levied to meet shortfall in assets of dissolved board—Where a training board has been dissolved (whether under the Vocational Training Act 1982 or by section 22 of this Act) the Minister may, by written notice, impose on employers in the industry for which it was established (other than any exempted by the notice) a levy to raise any amount by which its assets are not enough to meet its liabilities and the expenses of or arising out of its dissolution. 30

SCHEDULES

FIRST SCHEDULE

Section 14 (2)

CONSEQUENTIAL REPEALS

- 1985, No. 4—The Apprenticeship Amendment Act 1985.
- 1987, No. 8—The Official Information Amendment Act 1987: So much of the Third Schedule as relates to the Technicians Training Act 1967. (R.S. Vol. 21, p. 579.)
- 1988, No. 20—The State Sector Act 1988: So much of the Fifth Schedule as relates to the Apprenticeship Act 1983.
- 1988, No. 119—The Trustee Amendment Act 1988: So much of the Second Schedule as relates to the Technicians Training Act 1967.
- 1990, No. 60—The Education Amendment Act 1990: So much of the Second and Fourth Schedules as relates to the Technicians Training Act 1967 or the Apprenticeship Act 1983.
- 1991, No. 23—The Apprenticeship Amendment Act 1991.
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Section 21 (1)**SECOND SCHEDULE****ENACTMENTS REPEALED**

- 1978, No. 82—The Industrial Training Levies Act 1978.
- 1982, No. 54—The Vocational Training Act 1982.
- 1985, No. 45—The Vocational Training Amendment Act 1985.
- 1988, No. 25—The Industrial Training Levies Amendment Act 1988.
- 1988, No. 40—The Vocational Training Amendment Act 1988.
- 1989, No. 44—The Public Finance Act 1989: So much of the First Schedule as relates to the Industrial Training Levies Act 1978.
- 1989, No. 82—The Labour Department Act Repeal Act 1989: So much of the Schedule as relates to the Industrial Training Levies Act 1978 or the Vocational Training Act 1982.
- 1989, No. 90—The Industrial Training Levies Amendment Act 1989.
- 1990, No. 6—The Education Amendment Act 1990: So much of the Second Schedule as relates to the Industrial Training Levies Act 1978 or the Vocational Training Act 1982.
- 1990, No. 126—The National Provident Fund Restructuring Act 1990: So much of the Sixth Schedule as is expressed to relate to the Vocational Training Act 1982.
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THIRD SCHEDULE
CONSEQUENTIAL REVOCATIONS

Section 14 (3)

Title	<i>Gazette Reference</i>
The Building Industry Technician Training Council Order 1969	1969, Vol. I, p. 739
The Dental Industry Technician Training Council Order 1973	1973, Vol. I, p. 683
The Dental Industry Technician Training Council Order 1973, Amendment No. 1	1979, Vol. I, p. 973
The Dental Industry Technician Training Council Order 1973, Amendment No. 2	1973, Vol. III, p. 4113